

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 10th day of August, two thousand and six.

PRESENT:

HON. RALPH K. WINTER,  
HON. CHESTER J. STRAUB,  
HON. ROBERT A. KATZMANN,  
*Circuit Judges.*

Wei Chang Lin,

*Petitioner,*

v.

No. 05-5264-ag  
NAC

Alberto R. Gonzales, United States Attorney General,  
*Respondent.*

FOR PETITIONER: Gregory Marotta, Belle Mead, New Jersey.

FOR RESPONDENT: Donald J. DeGabrielle, Jr., United States Attorney, Claude Hippard, Assistant United States Attorney, Houston, Texas.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is GRANTED, the BIA's decision is VACATED, and the case is

1 REMANDED to the BIA.

2 Wei Chang Lin (A 77 322 627), through counsel, petitions for review of the BIA decision  
3 affirming Immigration Judge (“IJ”) Noel Anne Ferris’s decision denying his application for  
4 asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We  
5 assume the parties’ familiarity with the underlying facts and procedural history of the case.

6 Where, as here, the BIA issues an order that fully adopts the IJ’s decision, this Court  
7 reviews the IJ’s decision. *See, e.g., Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005).  
8 This Court reviews *de novo* questions of law regarding “what evidence will suffice to carry an  
9 asylum applicant’s burden of proof.” *Islami v. Gonzales*, 412 F.3d 391, 396 (2d Cir. 2005)  
10 (internal quotation marks omitted). This Court reviews agency findings of fact under the  
11 substantial evidence standard, treating them as “conclusive unless any reasonable adjudicator  
12 would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see Zhou Yun Zhang*  
13 *v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

14 The Fifth Amendment’s “Due Process Clause applies to all ‘persons’ within the United  
15 States, including aliens . . . ” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). In order to make a  
16 showing of a violation of due process, the applicant must show that he was denied a full and fair  
17 opportunity to present his claims or otherwise deprived of fundamental fairness. *See Xiao Jie*  
18 *Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 155 (2d Cir. 2006). An alien “shall have a  
19 reasonable opportunity . . . to present evidence on the alien’s own behalf,” 8 U.S.C. §  
20 1229a(b)(4)(B), and an IJ’s evidentiary rulings must comport with due process, *see Secaída-*  
21 *Rosales v. INS*, 331 F.3d 297, 306 n.2 (2d Cir. 2003). In this case, Lin argues that the IJ violated  
22 his right to due process by prohibiting one of Lin’s witnesses, a priest who had previously lived

1 in China, from testifying about problems experienced by underground churches in China. Lin  
2 contends that Reverend Ming's testimony on underground churches in China was relevant and  
3 probative, and would have aided the IJ in making her decision. We agree.

4 Reverend Ming testified that the Roman Catholic church in Beijing was an underground  
5 church, which was not sanctioned by the government. The IJ noted for the record that Lin's  
6 counsel did not put the Court on notice that Reverend Ming was an expert witness on the state of  
7 religion in China, prohibited Reverend Ming from testifying about his experiences in China  
8 before coming to the United States because his affidavit did not mention his experiences before  
9 coming to the United States, and discussed the necessity of reviewing Ming's A file in order to  
10 appropriately certify him as an expert witness. However, Ming's affidavit included a reference to  
11 his participation in an underground Catholic church in China, shortly after his ordination and  
12 before he departed for the United States. Additionally, Lin's attorney sought to question Ming  
13 regarding his personal experiences as a pastor of an underground church, not regarding the  
14 general state of religion in China. Because this information was relevant and probative to Lin's  
15 claim of persecution on account of his affiliation with and participation in an underground  
16 Catholic church in China, the IJ erroneously prohibited further testimony, and deprived Lin of a  
17 full and fair opportunity to present his claim.

18 The IJ also erred in faulting Lin for failing to adequately corroborate his claim that  
19 authorities sought his arrest in China, and actually detained his mother for 15 days. "[I]f [an IJ]  
20 intends to rely on the absence of certain corroborative evidence to hold that an applicant has not  
21 satisfied his burden of proof, [the IJ] must give the applicant an opportunity to explain its  
22 absence." *Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 394–95 (2d Cir. 2005). Here, the

1 IJ never made clear to Lin what evidence she would have considered sufficient to prove that the  
2 authorities had sought his arrest in China or that his foster mother had been detained for 15 days,  
3 and never gave Lin an opportunity to explain the absence of such documents, and was thus  
4 unreasonable in relying on such lack of corroborating evidence in finding that Lin failed to meet  
5 his burden of proof.

6 Because he failed to raise his CAT claim before the BIA, Lin is prohibited from arguing it  
7 before this Court. *Gill v. INS*, 420 F.3d 82, 86 (2d Cir. 2005) (holding that 8 U.S.C. § 1252(d)(1)  
8 bars “the consideration of bases for relief that were not raised below, and of general issues that  
9 were not raised below, but not of specific, subsidiary legal arguments, or arguments by extension,  
10 that were not made below”).

11 \_\_\_\_\_For the foregoing reasons, the petition for review is GRANTED, the BIA’s decision is  
12 VACATED, and the case is REMANDED to the BIA for further proceedings consistent with this  
13 order.

14  
15 FOR THE COURT:  
16 Roseann B. MacKechnie, Clerk  
17

18 By: \_\_\_\_\_